

November 10, 2016

By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Business Data Services In an Internet Protocol Environment;
Special Access For Price Cap Local Exchange Carriers,
WC Docket No. 16-143, WC Docket No. 05-25, RM-10593*

Dear Ms. Dortch:

Alaska Communications submits this supplemental letter in the above-captioned proceeding¹ in support of the recent proposal by Cincinnati Bell Inc. for a mid-sized carrier exception to the Commission's proposed Business Data Services ("BDS") regulations.²

The Chairman has proposed that TDM-based services offered by the price cap local exchange carriers ("LECs") should be regulated regardless of the competitive conditions in any

¹ This letter supplements the information Alaska Communications presented in its Comments and Reply Comments and letters filed on August 23, September 2 and October 14 in these dockets. *Business Data Services In an Internet Protocol Environment, et al.*, WC Docket Nos. 16-143, 05-25, RM-10593, Comments of Alaska Communications (filed June 28, 2016); Reply Comments of Alaska Communications (filed August 9, 2016); Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Aug. 23, 2016); Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Sept. 2, 2016); Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Oct. 14, 2016).

² Letter from Karen Brinkmann, Counsel to Cincinnati Bell, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143 & 05-25, RM-10593 (filed Nov. 4, 2016) ("Cincinnati Bell Letter").

LEC's market.³ The Chairman's Proposal abandons the market-specific analysis that had been proposed by the Commission,⁴ replacing it with heavy-handed regulation of the incumbent LEC, including significant cuts to prices for TDM-based services,⁵ that would discourage investment in advanced services and facilities. There is no evidence in the record of this proceeding supporting such measures in the highly competitive markets served by Alaska Communications. Indeed, the record indicates that this approach would disserve the public interest in such markets.⁶

Cincinnati Bell advocates that the Commission limit its regulation of TDM-based services to the largest price cap carriers, who were the target of this proceeding from the outset, and forbear from regulation of the mid-sized price cap LECs unless evidence emerges to support FCC intervention.⁷

Without withdrawing any of the other concerns and objections that Alaska Communications has raised in this proceeding, Alaska Communications supports Cincinnati Bell's request that the Commission exclude mid-sized carriers from any mandatory rate cuts, and forbear from price regulation of their TDM-based services as well as Ethernet and other advanced, high-speed services. The definition of "mid-sized incumbent local exchange carrier" set forth in Part 32 of the Commission's rules – that is, a carrier whose annual revenue from regulated telecommunications operations (together with the revenues of its affiliated local exchange carriers) is within the "indexed revenue threshold" established by the Commission

³ "Chairman Wheeler's Proposal to Promote Fairness, Competition, and Investment in the Business Data Services Market" (rel. Oct. 7, 2016), available at:

<https://www.fcc.gov/document/chmn-wheeler-update-business-data-services-rules>

("Chairman's Proposal").

⁴ *Business Data Services In An Internet Protocol Environment*, WC Docket No. 16-143 *et al.*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, FCC 16-54, ¶11 (rel. May 2, 2016).

⁵ Chairman's Proposal at 1-2.

⁶ *E.g.*, Cincinnati Bell Letter at 2-4 (regulations such as those proposed by Chairman Wheeler would stifle investment incentives and hamper competition in contested markets); Letter from Dr. Joseph V. Farrell *et al.*, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, 15-247 (filed Sept. 14, 2016) at 1-2 (opposing across-the-board rate regulation in the absence of specific evidence of market failure); Reply Declaration of Michael Katz and Bryan Keating, Ex. A to Reply Comments of National Cable & Telecommunications Ass'n ("NCTA"), WC Docket Nos. 16-143 & 05-25, ¶85 (filed Aug. 9, 2016) (documenting the harmful effects of price regulation that is not carefully tailored to entrenched monopoly circumstances); Comments of Comcast Corporation in WC Docket Nos. 16-143, 05-25, 15-247, RM-10593 (filed June 28, 2016) at 25 ("the Commission should let any measures to remove barriers to competitive entry and investment play out before pursuing more drastic regulatory intervention in the BDS marketplace"); *id.* at 43 ("economic models strongly indicate that the imposition of rate caps would have substantially reduced the network build-out Comcast undertook in recent years and would materially curtail such build-out in the future").

⁷ Cincinnati Bell Letter at 4.

under Part 32 of its rules for distinguishing Class A telecommunications carriers from mid-sized carriers – would be appropriate in this context.⁸ This figure, which originally was set at \$7 billion, now stands at \$9.18 billion after annual indexing as ordered by the Commission.⁹

The Commission should extend relief to the carriers whose regulated revenues are below the \$9.18 billion threshold in acknowledgement that mid-sized companies lack market power in the BDS sector, and the record fails to support regulation at this time. The Commission has the authority under Title II to address complaints if any market power abuse were to be alleged going forward. The Commission could reassess the BDS market in mid-sized price cap territories, and revisit its conclusions, after a reasonable trial period – say, in five years. In the meantime, forbearance from regulation of BDS services will further the public interest by encouraging investment by these carriers and allowing competition to function without artificial price constraints.

Respectfully submitted,



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⁸ 47 C.F.R. §32.9000 – Glossary of Terms, “Mid-sized incumbent local exchange carrier.” Alaska Communications is one of the smallest mid-sized incumbent LECs, with total corporate revenues in 2015 of roughly \$232.8 million.

⁹ See FCC Public Notice, “Wireline Competition Bureau Announces Annual Adjustment of Revenue Thresholds,” DA 16-1058 (rel. Sept. 20, 2016) (announcing the revenue threshold for 2015, and noting that the Commission concluded in 2001 that the \$7 billion threshold should be annually indexed for inflation).